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## OLR Bill Analysis

### sSB 1218

#### ***AN ACT CONCERNING THE DENIAL OF CERTAIN LICENSE APPLICATIONS WHEN STATE TAXES ARE OWING AND VARIOUS CHANGES TO TITLE 12.***

#### **SUMMARY:**

This bill allows the Department of Revenue Services (DRS) commissioner to make up to three agreements annually with heads of state agencies that issue business, professional, and occupational licenses to require license applicants to pay any state taxes they owe before receiving a license, unless the applicant demonstrates that (1) not issuing the license will cause the applicant undue hardship or (2) issuing it is otherwise in the state's best interests.

The bill also:

1. eliminates certain notice and certification requirements when the DRS commissioner withholds a taxpayer's Connecticut tax refund at the request of another state where the taxpayer owes taxes;
2. (a) requires a company to meet both, rather than one, of the existing criteria to have economic nexus in Connecticut and thus be liable for corporation tax and (b) exempts certain foreign corporations from economic nexus in conformity with DRS's current policy;
3. gives a company that overpays its estimated corporation tax for the year the option to apply the overpayment to its estimated tax payments in the following year;
4. allows the DRS commissioner to require payers that withhold Connecticut income tax from nonpayroll amounts to pay the withholding tax to DRS electronically on the same basis as

employers;

5. requires a successor who buys a business or its entire stock from an employer to withhold enough funds from the purchase price to cover any withholding tax due until the employer produces either a DRS receipt for the tax payment or a DRS certificate that no taxes are due;
6. extends from three to six years the deadline for DRS to send a tax deficiency assessment notice to any employer or pass-through entity that omits from its withholding tax return more than 25% of includable adjusted gross income withheld from employee wages or payments to nonresident members, respectively; and
7. exempts from sales and use tax, any part of the sale price of a vehicle that has special equipment for the exclusive use of a person with physical disabilities already installed, if the vehicle is sold to such a person.

EFFECTIVE DATE: Various, see below

### **§ 1 — STATE TAX PAYMENT AS A CONDITION OF ISSUING STATE LICENSE**

The bill allows the DRS commissioner and the head of any agency that issues any professional, occupational, or business license to enter into a memorandum of understanding or other agreement to require license applicants to pay state taxes they owe before receiving a license. It bars the DRS commissioner from making more than three such agreements in any fiscal year. The bill covers any individual, business, society, association, estate, receiver, trustee, assignee, or court-appointed or other fiduciary or representative who applies for a state occupational, professional, or business license or who must be included in the application.

Agreements must (1) ensure that no license is issued until the applicant pays what he or she owes and (2) establish a method for the licensing agency to verify that applicants owe no state taxes. Taxes

owed include taxes, penalties, and interest due to the state and for which all administrative or judicial remedies for disputing amounts owed have expired or been exhausted. They do not include payments due under a payment agreement between DRS and a taxpayer that is not in default.

Agreements must also require the licensing agency to issue the license, regardless of whether the applicant owes state taxes, if the applicant establishes to the DRS commissioner's satisfaction, after consultation with the licensing agency head, that (1) failure to issue the license will cause the applicant undue hardship or (2) issuing the license is otherwise in the state's best interest.

Agreements must require that, if a license applicant owes state taxes, the DRS commissioner must give the applicant notice and an opportunity for a hearing. The hearing is limited to verifying that the applicant owes state taxes.

The bill allows the DRS commissioner to (1) disclose to the licensing agency head with whom the commissioner has an agreement, information about whether a license applicant has paid all state taxes owed and (2) adopt implementing regulations.

EFFECTIVE DATE: July 1, 2011

## **§ 2 — RECIPROCAL TAX REFUND AGREEMENTS WITH OTHER STATES**

Existing law allows the DRS commissioner to withhold all or part of a taxpayer's Connecticut tax refund if (1) another state to which the taxpayer owes taxes requests it and (2) the other state authorizes its tax officials to withhold tax refunds from a taxpayer who owes taxes to Connecticut. Under current law, as part of such a request, the other state's tax officer must certify:

1. the taxpayer's full name, address, and Social Security or federal employer identification number;
2. the amount to be collected, including a detailed statement

showing the tax, interest, and penalty for each taxable period;  
and

3. that applicable administrative and judicial remedies have been exhausted or have expired and the tax amount is legally enforceable.

The bill eliminates the requirement that the officer's certification include a detailed statement showing the tax, interest, and penalty for each taxable period.

Current law also requires the DRS commissioner to notify the taxpayer whenever he receives such a certification. The bill requires him to do so only if the taxpayer is otherwise entitled to a Connecticut tax refund. It also eliminates a requirement that the commissioner include a copy of the other state's certification with the notice.

EFFECTIVE DATE: Upon passage

### **§ 3 — ECONOMIC NEXUS FOR CORPORATION TAX**

Under current law, and to the extent allowed by the U.S. Constitution, a company is subject to the Connecticut corporation tax if, regardless of physical presence, it (1) has a "substantial economic presence" here or (2) derives income from sources in the state. The bill requires that, to be subject to the Connecticut tax, a company must meet both rather than only one of these conditions.

By law, a company has "substantial economic presence" in Connecticut if it purposefully directs business towards the state, which must be determined by the frequency, quantity, and systematic nature of its economic contact with the state.

The bill also makes the law conform to DRS policy by exempting from the tax any company that (1) is treated as a foreign corporation under the federal tax code and (2) has no income "effectively connected" with a U.S. trade or business, as determined under the code. But if, and to the extent that, a company treated as a foreign corporation has income effectively connected with a U.S. trade or

business, that income must be considered to be its gross income for Connecticut corporation tax purposes, regardless of other corporation tax statutes. In addition, when such a company calculates its net income apportionment fractions to determine its Connecticut corporation tax liability, the bill requires it to do so using only its U.S.-connected property, payroll, and receipts.

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2011.

#### **§ 4 — ESTIMATED CORPORATION TAX OVERPAYMENTS**

By law, a corporation must make estimated corporation tax payments in four installments during its income year as follows: 30% of its estimated annual liability in the third month, 40% in the sixth, 10% in the ninth, and 20% in the 12<sup>th</sup>. If a company overpays one installment, the law requires the excess to be credited against the next installment. But, if the amount paid for the year exceeds the amount due for that year, under current law, the company receives a refund.

This bill gives a company that has overpaid its estimated corporation tax in one income year the option to apply the excess to its estimated taxes in the following year instead of receiving a refund. (DRS policy already allows companies to do this.) It requires the excess to be applied to the first installment due in the next income year and to any subsequent installments in the order they are due. The bill also eliminates the DRS commissioner's authority to adopt regulations concerning how excess estimated corporation tax payments are credited from one year to the next.

EFFECTIVE DATE: October 1, 2011, and applicable to estimated corporation tax payments for income years starting on or after January 1, 2012.

#### **§ 5 — ELECTRONIC FUNDS TRANSFER REQUIREMENTS FOR WITHHOLDING TAX PAYMENTS FROM NONPAYROLL AMOUNTS**

By law, the DRS commissioner can require employers with more than \$2,000 in annual income tax withholding liability from wages to pay the taxes electronically. The bill also allows the commissioner to

require electronic payments from any payers that had more than \$2,000 in income tax withholding liability from nonpayroll amounts. The commissioner must determine a payer's annual withholding tax liability based on the amount the payer withheld from nonpayroll amounts in the calendar year two years before the one in which the commissioner makes the determination.

As under existing law, the commissioner must notify the payer of the electronic payment requirement.

By law, nonpayroll amounts include:

1. gambling winnings paid to Connecticut residents that are subject to federal income tax withholding (i.e., payments over \$5,000);
2. Connecticut lottery winnings that must be reported to the IRS, regardless of whether they are subject to federal withholding (i.e., payments of \$600 or more and 300 times the wager);
3. pension and annuity distributions and military retirement paid to Connecticut residents requesting state income tax withholding;
4. unemployment compensation paid to those requesting state income tax withholding; and
5. nonwage payments to athletes or entertainers for which the DRS commissioner requires withholding (generally, fees over \$1,000 unless DRS grants a waiver) (CGS § 12-707 (e)(4)).

EFFECTIVE DATE: July 1, 2011, and applicable to tax periods ending on or after that date.

## **§ 6 — SUCCESSOR LIABILITY FOR WITHHOLDING TAXES**

Under the bill, when an employer who is required to pay withholding taxes sells or quits its business or sells out its entire stock, the employer's successors or assigns must hold back enough money from the purchase price to cover any unpaid withholding taxes, penalties, or interest due when the employer sells or quits. The buyer

must hold back the money until the employer provides either a DRS receipt showing that the employer has paid all taxes, penalties, and interest or a DRS certificate stating that no taxes are due. If the buyer fails to hold back the money, the bill makes the buyer personally liable for the amount that should have been withheld, up to the monetary value of the purchase price of the business or stock.

The bill requires the DRS commissioner to issue the certificate or mail the buyer a tax deficiency assessment notice according the regular procedure for such notices within 60 days after the latest of the following: (1) the date the commissioner receives the buyer's written request for a certificate that no taxes are due, (2) the date the employer sold or quit the business, or (3) the date the employer's records become available for DRS audit. If the commissioner fails to mail the deficiency assessment notice in time, the buyer need not hold back money from the purchase price.

Under the bill, the statutory three-year time limit for enforcing the successor's liability starts when (1) the employer sells or quits the business or (2) the assessment against the employer becomes final, whichever is later.

EFFECTIVE DATE: July 1, 2011, and applicable to sales of businesses and stock occurring on or after that date.

**§ 7 — WITHHOLDING TAX DEFICIENCY ASSESSMENT DEADLINE**

By law, DRS has six years, rather than the usual three, to send an income tax deficiency assessment notice to a taxpayer who omits more than 25% of his includable Connecticut adjusted gross income (AGI) from his income tax return without giving DRS adequate notice of the amount and nature of the omission in either the return itself or an attached statement.

The bill extends the same six-year the time limit for DRS to send a tax deficiency assessment notice to (1) an employer that omits more than 25% of Connecticut wages from its withholding tax return or (2) a pass-through entity that omits more than 25% of includable

Connecticut-sourced AGI from the withholding taxes required for its nonresident members. As under existing law, in either case, there must be no adequate notice of the amount and nature of the omission in the return or an attached statement.

By law, a “pass-through entity” is an S corporation; a general, limited, or limited liability partnership; or a limited liability company treated for tax purposes as a partnership. A “member” is a shareholder in an S corporation; a partner in a general, limited, or limited liability partnership; and a member in a limited liability company.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2011.

**§§ 8 & 9 — SALE OF USED MOTOR VEHICLE CONTAINING TAX-EXEMPT SPECIAL EQUIPMENT**

By law, the sale of special equipment to be installed in a motor vehicle for the exclusive use of a person with physical disabilities is exempt from sales and use tax. This bill also exempts the part of the sale price attributable to such special equipment when a vehicle with the equipment already installed is sold, either privately or by a dealer, for exclusive use by a person with physical disabilities. It requires the dealer to collect sales tax, or the private buyer to pay use tax, on the price of the vehicle alone.

EFFECTIVE DATE: Upon passage and applicable to all open tax periods.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute  
Yea 40 Nay 12 (04/07/2011)